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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
CHAIRMAN
JIM IRVIN
COMMISSIONER
WILLIAM A. MUNDELL
COMMISSIONER
JEFF HATCH-MILLER
COMMISSIONER
MIKE GLEASON
COMMISSIONER

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ARIZONA CORPORATION COMMISSION
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Arizona Corporation Commission

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IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING ELECTRIC
RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

IN THE MATTER OF ARIZONA PUBLIC
SERVICE COMPANY'S REQUEST FOR
VARIANCE OF CERTAIN REQUIREMENTS
OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

IN THE MATTER OF THE GENERIC
PROCEEDINGS CONCERNING THE
ARIZONA INDEPENDENT SCHEDULING
ADMINISTRATOR

Docket No. E-00000A-01-0630

ISSUES IN THE MATTER OF TUCSON
ELECTRIC POWER COMPANY'S
APPLICATION FOR A VARIANCE OF
CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS STRANDED COST
RECOVERY

NOTICE OF FILING PREFILED REBUTTAL TESTIMONY

Constellation NewEnergy, Inc. and Strategic Energy L.L.C., by and through their
undersigned counsel, hereby provide notice of filing the Prefiled Rebuttal Testimony of their
witness, Mark Fulmer of MRW & Associates, in the above-captioned dockets.

1 RESPECTFULLY SUBMITTED this 29th day of August 2003.

2 LAW OFFICES OF DANIEL W. DOUGLASS, APC

3 By Daniel W. Douglass *PRM*

4 Daniel W. Douglass

5 Gregory S.G. Klatt

6 Law Offices of Daniel W. Douglass

6303 Owensmouth Avenue, Tenth Floor

Woodland Hills, California 91367

Telephone (818) 936-2466

Facsimile (818) 936-2101

Attorneys for Constellation NewEnergy, Inc.
and Strategic Energy L.L.C.

9 **Original and 21 copies of the**
10 **forgoing filed on August 29,**
11 **2003 with:**

12 Docket Control
13 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, Arizona 85007

14 **Copy of the foregoing hand-delivered**
15 **on August 29, 2003 to:**

16 Teena Wolfe, Administrative Law Judge
17 Hearing Division
18 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
18 Phoenix, Arizona 85007

19 Christopher Kempley, Chief Counsel
20 Legal Division
21 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
22 Phoenix, Arizona 85007

23 Ernest G. Johnson, Director
24 Utilities Division
25 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
25 Phoenix, Arizona 85007

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27 **(Service List for Docket No. E-00000A-02-0051)**

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 MARC SPITZER
3 CHAIRMAN
4 JIM IRVIN
5 COMMISSIONER
6 WILLIAM A. MUNDELL
7 COMMISSIONER
8 JEFF HATCH-MILLER
9 COMMISSIONER
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11 COMMISSIONER
12

13 IN THE MATTER OF THE GENERIC
14 PROCEEDINGS CONCERNING ELECTRIC
15 RESTRUCTURING ISSUES.

Docket No. E-00000A-02-0051

16 IN THE MATTER OF ARIZONA PUBLIC
17 SERVICE COMPANY'S REQUEST FOR
18 VARIANCE OF CERTAIN REQUIREMENTS
19 OF A.A.C. R14-2-1606

Docket No. E-01345A-01-0822

20 IN THE MATTER OF THE GENERIC
21 PROCEEDINGS CONCERNING THE
22 ARIZONA INDEPENDENT SCHEDULING
23 ADMINISTRATOR

Docket No. E-00000A-01-0630

24 ISSUES IN THE MATTER OF TUCSON
25 ELECTRIC POWER COMPANY'S
26 APPLICATION FOR A VARIANCE OF
27 CERTAIN ELECTRIC COMPETITION RULES
COMPLIANCE DATES

Docket No. E01933A-02-0069

IN THE MATTER OF THE APPLICATION OF
TUCSON ELECTRIC POWER COMPANY
FOR APPROVAL OF ITS STRANDED COST
RECOVERY

Docket No. E-01933A-98-0471

28 **PREFILED REBUTTAL TESTIMONY OF**

29 **MARK FULMER**

30 **AUGUST 29, 2003**

1 **I. Introduction**

2 This reply testimony is submitted on behalf of the Constellation NewEnergy,
3 Inc. ("Constellation NE") and Strategic Energy L.L.C. ("Strategic Energy") in
4 response to testimony submitted by several parties on July 28, 2003, regarding the
5 future of the Arizona Independent Scheduling Administrator ("AISA"). I have not
6 attempted to reply to all direct testimony with which I disagree. Rather, this reply
7 testimony addresses a limited number of issues of particular importance. In
8 particular, I respond to assertions that the AISA is not needed for dispute resolution
9 and that the AISA could be funded on a voluntary basis. These suggestions move
10 Arizona away from the benefits offered by retail choice by making the state less
11 attractive to energy service providers such as Constellation NE and Strategic Energy.
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15 **II. The AISA Is Needed for Dispute Resolution**

16 On page 9 of the testimony of Arizona Electric Power Cooperative, Inc.
17 witness Mr. Huff, it is suggested that the FERC's "Enforcement Hotline" would be
18 sufficient to address dispute resolution. While this hotline undoubtedly has a place in
19 FERC's overall regulatory framework, it is not a reasonable substitute for the dispute
20 resolution framework set up in Section 6 the AISA bylaws. First, it must be noted
21 that the FERC Enforcement Hotline has a very broad mandate: it gathers information
22 on bidding anomalies, price spikes, inappropriate use of certain financial instruments,
23 fluctuations in available capacity on electric transmission lines and natural gas
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1 pipelines, interconnection discrimination, and improper market affiliate transactions.¹
2 Furthermore, its main function is gathering information in response to complaints.
3 Dispute resolution, while mentioned, is not listed as one of its main functions. It also
4 should be noted that barely one-third of the calls received by the Hotline in 2002
5 involved any electric issues, let alone let alone those involving the interpretation of
6 Open Access Transmission Tariffs ("OATTs") or energy service provider ("ESP")
7 dispute resolutions.²
8

9 Furthermore, Mr. Huff (page 10) and with some reservations, Tucson Electric
10 Power ("TEP") witness Mr. Beck (page 15), suggest that the dispute resolution
11 provisions in the utilities' OATT are sufficient for resolving more complex disputes.
12 I believe that market participants and the Commission should be more comfortable
13 with the protocols provided in section 6 of the AISA's bylaws than with the dispute
14 resolution procedures found in TEP's and APS's Open Access Transmission Tariffs
15 (Section 12 of either OATT). The AISA's method provides greater flexibility,
16 including a fast-track procedure, peer mediation as well as formal arbitration. The
17 OATT's dispute resolution focuses almost exclusively on arbitration.
18

19 Overall, I believe that keeping dispute resolution responsibilities, even
20 informal ones, with a local Arizona agency that is intimately familiar with the AISA's
21 Protocol Manual and the specific Arizona market is far preferable to ceding the
22 responsibility to a distant bureaucracy or relying on OATT mechanisms that were
23 designed to resolve issues arising in connection with point-to-point wholesale
24 transactions. Such local resolution will likely best serve all parties involved.
25

26 ¹ See, <http://www.ferc.gov/cust-protect/enforce-hot.asp>

27 ² Enforcements Hotline Statistics, FERC Office of Market Oversight and Investigations.

1 Mr. Huff also suggests that since the AISA's dispute resolution mechanism
2 was not used during the brief time that there were active retail direct access
3 transactions, that it is not needed now. While this fact speaks well of the protocols set
4 up by the AISA, the utilities and other parties active in the market at that time, it is
5 not relevant to the continued need for dispute resolution to be maintained by the
6 AISA. Dispute resolution is much like insurance: we hope that we will not need it,
7 but do not doubt it is wise to maintain. The fact that a driver has not been in an
8 accident is not a demonstration that she does not need insurance. Similarly, the fact
9 that the AISA's dispute resolution mechanisms were not called upon during the brief
10 time of market activity does not mean that they are not needed. Although dispute
11 resolution should be the method of last resort for addressing disagreements between
12 ESPs and transmission providers, it must be maintained to provide either party
13 entering into such an agreement with the assurance that any unforeseen difference
14 between it and the counterparty will be addressed swiftly and fairly.
15
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18 **III. AISA Funding Should Continue to Come from the Affected Utilities**

19 On page 4 and elsewhere in his testimony, Mr. Huff suggests the AISA should
20 be funded on a volunteer basis by "large consumers, ESP's, merchant plant operators
21 or other interested stakeholders" (page 4). Constellation NE and Strategic Energy
22 believe that in the long run, a grid manager or scheduling facilitator such as the AISA
23 should be funded through an access charge paid on a non-discriminatory basis by all
24 grid users. However, during the transition to a more market-oriented paradigm, such
25 funding is impractical. So as a public policy decision, the ACC chose to have the
26
27

1 AISA funded by the affected utilities. While this transition period is lasting longer
2 than anyone could have anticipated when the AISA was formed, the retail electric
3 market in Arizona is not yet mature or vibrant enough to fund the AISA via grid
4 access charges. On this, I believe Mr. Huff and I can agree.

5 Where I strongly differ is with the suggestion that it is sound policy to fund
6 the AISA on a voluntary basis. First, like any agency with an ongoing mission, the
7 AISA needs more assurance that it will continue to exist than is afforded by the
8 whims of voluntary funding. While it faces the budget issues confronted by any
9 agency that is dependent upon state policymakers, this is much different than that of a
10 non-profit, constantly scrounging for funds.
11

12 Furthermore, such a funding mechanism could in at least appearance tarnish
13 the "independence" of the AISA. If, for example, only a few donors stepped up to
14 provide the money to run the AISA, the appearance that the AISA's decisions could
15 be influenced by the fact that its existence depended upon the continuation of those
16 donations would make it a far less credible institution. This is not to remotely call
17 into question the integrity of anyone at the AISA, past or present. Rather, it is only to
18 point out that the appearance of undue influence could not be avoided if it were
19 funded in the way suggested by Mr. Huff.
20

21 This concludes my rebuttal testimony.
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23
24
25
26
27

**COPY hand delivered on
2003 to:**

Teena Wolfe
Administrative Law Judge
ARIZONA CORPORATION
COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Christopher Kempley, Chief Counsel
ARIZONA CORPORATION
COMMISSION
1200 W. Washington Street
Phoenix, Arizona 85007

Ernest G. Johnson, Utilities Division
ARIZONA CORPORATION
COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

**COPY MAILED/*E-MAILED on
2003 to:**

Scott S. Wakefield
RUCO
2828 N Central Ave, Suite 1200
Phoenix, Arizona 85004

*Michael A. Curtis
*William P. Sullivan
*Paul R. Michaud
MARTINEZ & CURTIS, P.C.
2712 North 7th Street
Phoenix, Arizona 85006
Attorneys for Arizona Municipal Power
Users Association, Mohave Electric
Cooperative, Inc., Navopache Electric
Cooperative, Inc., & Primesouth, Inc.
mc Curtis401@aol.com
wsullivan@martinezcurtis.com
pmichaud@martinezcurtis.com

Walter W. Meek, President
ARIZONA UTILITY INVESTORS
ASSOCIATION
2100 N. Central Avenue, Suite 210
Phoenix, Arizona 85004

Rick Gilliam
Eric C. Guidry
LAND AND WATER FUND OF THE
ROCKIES
ENERGY PROJECT
2260 Baseline Road, Suite 200
Boulder, Colorado 80302

Terry Frothun
ARIZONA STATE AFL-CIO
5818 N. 7th Street, Suite 200
Phoenix, Arizona 85014-5811

Norman J. Furuta
DEPARTMENT OF THE NAVY
900 Commodore Drive, Building 107
San Bruno, California 94066-5006

Barbara S. Bush
COALITION FOR RESPONSIBLE
ENERGY EDUCATION
315 West Riviera Drive
Tempe, Arizona 85252

Sam Defraw (Attn. Code 001)
Rate Intervention Division
NAVAL FACILITIES ENGINEERING
COMMAND
Building 212, 4th Floor
901 M Street, SE
Washington, DC 20374-5018

Rick Lavis
ARIZONA COTTON GROWERS
ASSOCIATION
4139 East Broadway Road
Phoenix, Arizona 85040

Steve Brittle
DON'T WASTE ARIZONA, INC.
6205 South 12th Street
Phoenix, Arizona 85040

COLUMBUS ELECTRIC
COOPERATIVE, INC.
P.O. Box 631
Deming, New Mexico 88031

CONTINENTAL DIVIDE ELECTRIC
COOPERATIVE
P.O. Box 1087
Grants, New Mexico 87020

DIXIE ESCALANTE RURAL
ELECTRIC ASSOCIATION
CR Box 95
Beryl, Utah 84714

GARKANE POWER ASSOCIATION,
INC.
P.O. Box 790
Richfield, Utah 84701

ARIZONA DEPT OF COMMERCE
ENERGY OFFICE
3800 North Central Avenue, 12th Floor
Phoenix, Arizona 85012

ARIZONA COMMUNITY ACTION
ASSOC.
2627 N. 3rd Street, Suite 2
Phoenix, Arizona 85004

TUCSON ELECTRIC POWER CO.
Legal Dept - DB203
220 W 6th Street
P.O. Box 711
Tucson, Arizona 85702-0711

A.B. Baardson
NORDIC POWER
6463 N. Desert Breeze Ct.
Tucson, Arizona 85750-0846

Jessica Youle
PAB300
SALT RIVER PROJECT
P.O. Box 52025
Phoenix, Arizona 85072-2025

Craig Marks
Deborah R. Scott
Carl Dabelstein
CITIZENS UTILITIES COMPANY
2901 N. Central Avenue, Suite 1660
Phoenix, Arizona 85012-2736

Barry Huddleston
DESTEC ENERGY
P.O. Box 4411
Houston, Texas 77210-4411

Steve Montgomery
JOHNSON CONTROLS
2032 West 4th Street
Tempe, Arizona 85281

Terry Ross
CENTER FOR ENERGY AND
ECONOMIC
DEVELOPMENT
P.O. Box 288
Franktown, CO 80116-0288

Larry McGraw
USDA-RUS
6266 Weeping Willow
Rio Rancho, New Mexico 87124

Jim Driscoll
ARIZONA CITIZEN ACTION
5160 E. Bellevue Street, Apt. 101
Tucson, AZ 85712-4828

William Baker
ELECTRICAL DISTRICT NO. 6
7310 N. 16th Street, Suite 320
Phoenix, Arizona 85020

Robert Julian
PPG
1500 Merrell Lane
Belgrade, Montana 59714

Robert S. Lynch
340 E. Palm Lane, Suite 140
Phoenix, Arizona 85004-4529
Attorney for Arizona Transmission
Dependent
Utility Group

K.R. Saline
K.R. SALINE & ASSOCIATES
160 N. Pasadena, Suite 101
Mesa, Arizona 85201-6764

Douglas Nelson
DOUGLAS C. NELSON PC
7000 N. 16th Street, Suite 120-307
Phoenix, Arizona 85020-5547
Attorney for Calpine Power Services

*Lawrence V. Robertson Jr.
MUNGER CHADWICK, PLC
333 North Wilmot, Suite 300
Tucson, Arizona 85711-2634
Attorney for PG&E Energy Services Corp.
Lvrobertson@mungerchadwick.com

Albert Sterman
ARIZONA CONSUMERS COUNCIL
2849 East 8th Street
Tucson, Arizona 85716

*Michael Grant
GALLAGHER & KENNEDY
2575 East Camelback Road
Phoenix, Arizona 85016-9225
Attorneys for AEPCO, Graham County Electric Cooperative, and Duncan Valley Electric Cooperative.
Mmg@gknet.com

Vinnie Hunt
CITY OF TUCSON
Department of Operations
4004 S. Park Avenue, Building #2
Tucson, Arizona 85714

Ryle J. Carl III
INTERNATION BROTHERHOOD OF ELECTRICAL WORKERS, L.U. #1116
750 S. Tucson Blvd.
Tucson, Arizona 85716-5698

Robert J. Metli
CHEIFETZ & IANNITELLI, P.A.
3238 North 16th Street
Phoenix, Arizona 85016
Attorney for Citizens Communications Co.

*William J. Murphy
CITY OF PHOENIX
2631 S. 22nd Avenue
Phoenix, Arizona 85009
Bill.murphy@phoenix.gov

*Russell E. Jones
WATERFALL ECONOMIDIS
CALDWELL HANSHAW &
VILLAMANA, P.C.
5210 E. Williams Circle, Suite 800
Tucson, Arizona 85711
Attorneys for Trico Electric Cooperative, Inc.
Rjones@wechv.com

*Christopher Hitchcock
HITCHCOCK & HICKS
P.O. Box 87
Bisbee, Arizona 85603-0087
Attorney for Sulphur Springs Valley Electric Cooperative, Inc.
Lawyers@bisbeelaw.com

Andrew Bettwy
Debra Jacobson
SOUTHWEST GAS CORPORATION
5241 Spring Mountain Road
Las Vegas, Nevada 89150-0001

Barbara R. Goldberg
OFFICE OF THE CITY ATTORNEY
3939 Civic Center Blvd.
Scottsdale, Arizona 85251

Bradford A. Borman
PACIFICORP
210 S. Main St.
Suite 2000
Salt Lake City, Utah 84140-2300

Timothy M. Hogan
ARIZONA CENTER FOR LAW
IN THE PUBLIC INTEREST
202 E. McDowell Rd., Suite 153
Phoenix, Arizona 85004

Marcia Weeks
18970 N. 116th Lane
Surprise, Arizona 85374

John T. Travers
William H. Nau
272 Market Square, Suite 2724
Lake Forest, Illinois 60045

Timothy Michael Toy
WINTHROP, STIMSON, PUTNAM &
ROBERTS
One Battery Park Plaza
New York, New York 10004-1490

*Raymond S. Heyman
Michael W. Patten
ROSHKA HEYMAN & DEWULF,
PLC
400 E. Van Buren, Suite 800
Phoenix, Arizona 85004
Attorneys for Tucson Electric Power Co.
Rheyman@rhd-law.com

Chuck Miessner
NEV SOUTHWEST LLC
P.O. Box 711, Mailstop-DA308
Tucson, Arizona 85702-0711

Billie Dean
AVIDD
P O Box 97
Marana, Arizona 85652-0987

Steven C. Gross
PORTER SIMON
40200 Truckee Airport Road
Truckee, CA 96161-3307
Attorneys for M-S-R Public Power Agency

Donald R. Allen
John P. Coyle
DUNCAN & ALLEN
1575 Eye Street, N.W., Suite 300
Washington, DC 20005

Ward Camp
PHASER ADVANCED METERING
SERVICES
400 Gold SW, Suite 1200
Albuquerque, New Mexico 87102

Betsy Galtney
IDAHO POWER COMPANY
P.O. Box 70
Boise, Idaho 83707

Libby Brydolf
CALIFORNIA ENERGY MARKETS
NEWSLETTER
2419 Bancroft Street
San Diego, California 92104

Paul W. Taylor
R W BECK
14635 N. Kierland Blvd., Suite 130
Scottsdale, AZ 85254-2769

James P. Barlett
5333 N. 7th Street, Suite B-215
Phoenix, Arizona 85014
Attorney for Arizona Power Authority

*Jay I. Moyes
MOYES STOREY
3003 N. Central Ave., Suite 1250
Phoenix, Arizona 85012
Attorneys for PPL Southwest Generation Holdings, LLC; PPL EnergyPlus, LLC and PPL Sundance Energy, LLC
jimoyes@lawms.com

Stephen L. Teichler
Stephanie A. Conaghan
DUANE MORRIS & HECKSCHER,
LLP
1667 K Street NW, Suite 700
Washington, DC 20006

Kathy T. Puckett
SHELL OIL COMPANY
200 N. Dairy Ashford
Houston, Texas 77079

Peter Q. Nyce, Jr.
DEPARTMENT OF THE ARMY
JALS-RS Suite 713
901 N. Stuart Street
Arlington, Virginia 22203-1837

Michelle Ahlmer
ARIZONA RETAILERS
ASSOCIATION
224 W. 2nd Street
Mesa, Arizona 85201-6504

Dan Neidlinger
NEIDLINGER & ASSOCIATES
3020 N. 17th Drive
Phoenix, Arizona 85015

Chuck Garcia
PNM, Law Department
Alvarado Square, MS 0806
Albuquerque, New Mexico 87158

Sanford J. Asman
570 Vinington Court
Dunwoody, Georgia 30350-5710
*Patricia Cooper
AEP/CO/SSWEP/CO
P.O. Box 670
Benson, Arizona 85602
Pcooper@aepnet.org

Steve Segal
LeBoeuf, Lamb, Green & Macrae
633 17th Street
Suite 2000
Denver, CO 80202-3620

Holly E. Chastain
SCHLUMBERGER RESOURCE
MANAGEMENT SERVICES, INC.
5430 Metric Place
Norcross, Georgia 30092-2550

Leslie Lawner
ENRON CORP
712 North Lea
Roswell, New Mexico 88201

Frederick M. Bloom
Commonwealth Energy Corporation
15991 Red Hill Avenue, Suite 201
Tustin, California 92780

Margaret McConnell
Maricopa Community Colleges
2411 W. 14th Street
Tempe, Arizona 85281-6942

Brian Soth
FIRSTPOINT SERVICES, INC.
1001 S.W. 5th Ave, Suite 500
Portland, Oregon 97204

Jay Kaprozy
PHOENIX CHAMBER OF
COMMERCE
201 N. Central Ave., 27th Floor
Phoenix, Arizona 85073

Kevin McSpadden
MILBANK, TWEED, HADLEY AND
MCCLOY, LLP
601 S. Figueroa, 30th Floor
Los Angeles, California 90017

M.C. Arendes, Jr.
C3 COMMUNICATIONS, INC.
2600 Via Fortuna, Suite 500
Austin, Texas 78746

*Patrick J. Sanderson
ARIZONA INDEPENDENT
SCHEDULING
ADMINISTRATOR ASSOCIATION
P.O. Box 6277
Phoenix, Arizona 85005-6277
Psanderson@az-isa.org

*Roger K. Ferland
QUARLES & BRADY STREICH
LANG, L.L.P.
Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391
Rferland@quarles.com

Charles T. Stevens
ARIZONANS FOR ELECTRIC
CHOICE & COMPETITION
245 W. Roosevelt
Phoenix, Arizona 85003

Mark Sirois
ARIZONA COMMUNITY ACTION
ASSOC.
2627 N. Third Street, Suite 2
Phoenix, Arizona 85004

*Jeffrey Guldner
Jeff Guldner, Esq.
SNELL & WILMER
400 E. Van Buren,
One Arizona Center
Phoenix, Arizona 85004-0001
jguldner@swlaw.com

*Thomas L. Mumaw
Pinnacle West Capital Corporation
P.O. Box 53999 MS8695
Phoenix, AZ 86072-39999
thomas.mumaw@pinnaclewest.com

Steven J. Duffy
RIDGE & ISAACSON PC
3101 N. Central Avenue, Suite 740
Phoenix, Arizona 85012

*Greg Patterson
5432 E. Avalon
Phoenix, Arizona 85018
Gpatterson@aol.com

*John Wallace
Grand Canyon State Electric Co-op
120 N. 44th Street, Suite 100
Phoenix, Arizona 85034-1822
jwallace@gcseca.org

Steven Lavigne
DUKE ENERGY
4 Triad Center, Suite 1000
Salt Lake City, Utah 84180

Dennis L. Delaney
K.R. SALINE & ASSOC.
160 N. Pasadena, Suite 101
Mesa, Arizona 85201-6764

*Kevin C. Higgins
ENERGY STRATEGIES, LLC
30 Market Street, Suite 200
Salt Lake City, Utah 84101
KHiggins@Energystrat.com

*Michael L. Kurtz
BORHM KURTZ & LOWRY
36 E. Seventh Street, Suite 2110
Cincinnati, Ohio 45202
Mkurtzlaw@aol.com

David Berry
P.O. Box 1064
Scottsdale, Arizona 85252

*William P. Inman
Dept. of Revenue
1600 W. Monroe, Room 911
Phoenix, Arizona 85007
InmanW@revenue.state.az.us

*Robert Baltes
ARIZONA COGENERATION ASSOC.
7250 N. 16th Street, Suite 102
Phoenix, Arizona 85020-5270
Rbaltes@bvaeng.com

*Jana Van Ness
APS
Mail Station 9905
P.O. Box 53999
Phoenix, Arizona 85072-3999
Jana.vanness@aps.com

David Couture
TEP
4350 E. Irvington Road
Tucson, Arizona 85714

*Kelly Barr
Jana Brandt
SRP
Mail Station PAB211
P.O. Box 52025
Phoenix, Arizona 85072-2025
Kibarr@srpnet.com
Jkbrandt@srpnet.com

Randall H. Warner
JONES SKELTON & HOCHULI PLC
2901 N. Central Avenue, Suite 800
Phoenix, Arizona 85012

John A. LaSota, Jr.
MILLER LASOTA & PETERS, PLC
5225 N. Central Ave., Suite 235
Phoenix, Arizona 85012

Peter W. Frost
Conoco Gas and Power Marketing
600 N. Dairy Ashford, CH-1068
Houston, Texas 77079

Joan Walker-Ratliff
Conoco Gas and Power Marketing
1000 S. Pine, 125-4 ST UPO
Ponca City, Oklahoma 74602

*Vicki G. Sandler
C/o Linda Spell
APS Energy Services
P.O. Box 53901
Mail Station 8103
Phoenix, Arizona 85072-3901
Linda_spell@apses.com

*Lori Glover
STIRLING ENERGY SYSTEMS
2920 E. Camelback Rd., Suite 150
Phoenix, Arizona 85016
Lglover@stirlingenergy.com

*Jeff Schlegel
SWEEP
1167 Samalayuca Drive
Tucson, Arizona 85704-3224
Schlegelj@aol.com

*Howard Geller
SWEEP
2260 Baseline Rd., Suite 200
Boulder, Colorado 80302
Hgeller@swenergy.org

*Mary-Ellen Kane
ACAA
2627 N. 3rd Street, Suite Two
Phoenix, Arizona 85004
Mkane@azcaa.org

*Aaron Thomas
AES NewEnergy
350 S. Grand Avenue, Suite 2950
Los Angeles, California 90071
Aaron.thomas@aes.com

Theresa Mead
AES NewEnergy
P.O. Box 65447
Tucson, AZ 85728

*Peter Van Haren
CITY OF PHOENIX
Attn: Jesse W. Sears
200 W. Washington Street, Suite 1300
Phoenix, Arizona 85003-1611
Jesse.sears@phoenix.gov

*Robert Annan
ARIZONA CLEAN ENERGY
INDUSTRIES ALLIANCE
6605 E. Evening Glow Drive
Scottsdale, Arizona 85262
Annan@primenet.com

Curtis L. Kebler
RELIANT RESOURCES, INC.
8996 Etiwanda Avenue
Rancho Cucamonga, California 91739

*Philip Key
RENEWABLE ENERGY
LEADERSHIP GROUP
10631 E. Autumn Sage Drive
Scottsdale, Arizona 85259
Keytaic@aol.com

*Paul Bullis
OFFICE OF THE ATTORNEY
GENERAL
1275 W. Washington Street
Phoenix, Arizona 85007
Paul.bullis@ag.state.az.us

*Laurie Woodall
OFFICE OF THE ATTORNEY
GENERAL
15 S. 15th Avenue
Phoenix, Arizona 85007
Laurie.woodall@ag.state.az.us

*Donna M. Bronski
CITY OF SCOTTSDALE
3939 N. Drinkwater Blvd
Scottsdale, Arizona 85251
Dbronski@ci.scottsdale.az.us

*Larry F. Eisenstat
Frederick D. Ochsenhirt
DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP
2101 L Street, NW
Washington, DC 20037
Eisenstat@dsmo.com
Ochsenhirt@dsmo.com

*David A. Crabtree
Dierdre A. Brown
TECO POWER SERVICES CORP.
P.O. Box 111
Tampa, Florida 33602
Dacrabtree@tecoenergy.com
Dabrown@tecoenergy.com

*Michael A. Trentel
Patrick W. Burnett
PANDA ENERGY INTERNATIONAL
INC
4100 Spring Valley, Suite 1010
Dallas, Texas 75244
Michaelt@pandaenergy.com
Patb@pandaenergy.com

*Theodore E. Roberts
SEMPRA ENERGY RESOURCES

101 Ash Street, HQ 12-B
San Diego, California 92101-3017
Troberts@sempra.com

Jesse Dillon
PPL Services Corp.
2 N. Ninth Street
Allentown, PA 18101-1179

Gary A. Dodge
HATCH, JAMES & DODGE
10 W. Broadway
Suite 400
Salt Lake City, UT 84101

Ronald W. Grossarth
Public Service Co. of New Mexico
2401 Aztec NE
Albuquerque, NM 87107

Mark J. Smith
FPL Energy LLC
Livermore, CA 94550

Alan R. Watts
Southern California Public Power
Authority
17132 El Cajon Avenue
Yorba Linda, CA 92886

Patrick J. Sanderson, Acting Executive
Director
Arizona Independent Scheduling
Administrator Association
P.O. Box 6562
Phoenix, AZ 85005-6562

ARIZONA REPORTING SERVICE,
INC.
2627 N. Third Street, Suite Three
Phoenix, Arizona 85004-1104